IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3959 OF 2006

1. Sanjeev Kumar Sadanandan Pillai)
2. Shamsuddin Siddiqui Mohammad Shaikh)-Applicants

Versus

The State of Maharashtra)-Respondent

Shri Shreeram V. Shirsat, Advocate appointed for the Applicants.
Shri U.V.Nikam, A.P.P for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE ON WHICH JUDGMENT IS RESERVED : DECEMBER 22, 2006.

DATE ON WHICH JUDGMENT IS PRONOUNCED : JUNE 04, 2007.

JUDGMENT:

1. After the Judgment was reserved, the file of the Application was misplaced and therefore, the Judgment could not be pronounced earlier. This is an Application received through jail in which a prayer has been made by the Applicants for a direction that sentences awarded in Sessions Case No.545 of 2002 and Sessions Case No.675 of 2002 shall be ordered to run concurrently.

2. In Sessions Case No.545 of 2002, by a Judgment and Order dated 18th January, 2005 the Petitioners have been convicted for the offences punishable under

section 392 read with section 34 read with section 397 of the Indian Penal Code and have been sentenced to suffer rigorous imprisonment for a period of seven years. In Sessions Case No.675 of 2002, by Judgment and Order dated 24th October, 2005 the Applicant No.1 has been convicted for offence punishable under section 392 read with section 34 of the Indian Penal Code and they have been sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- each. In the said case, the first Applicant has been also convicted for offence punishable under section 392 read with section 397 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/-. In both cases the Sessions Court has granted set-off under section 428 of the Code of Criminal Procedure, 1973.

3. The submission made in the Application is that unless the sentences in both the cases are ordered to run concurrently, the Petitioners will have to undergo imprisonment for a period of fourteen years.

4. The learned Advocate appointed to espouse the cause of the Applicants has invited my attention to the decision of the Apex Court in the case of **Amma-vasai & Anr. Vs. The Inspector of Police, Valliyanur**

& Ors [(2000) 9 Supreme Court Cases Page 749]. He placed reliance on a decision of the learned single Judge of this Court in the case of **Mohan Bhanudas Mohite Vs. State of Maharashtra (2004(3) Maharashtra Law Journal page 624)**. He also placed reliance on an unreported decision of another learned single Judge of this Court in **Criminal Application No.2474 of 2004 (Rajan Mohanlal Thakur Vs. State of Maharashtra-Respondent)**. He submitted that the learned single Judges of this Court on consideration of the decision of the Apex Court in the case of Ammavasai (supra) have directed concurrent running of sentences in two different cases against the same accused arising out of different transactions.

5. The learned A.P.P submitted that in the present case both the offences are totally distinct and they do not form part of the same transaction and therefore, there is no power vesting in the Court to direct concurrent running of the sentences.

6. In the case of Ammavasai (supra) the first Appellant before the Apex Court was convicted in four different cases relating to offences committed in the year 1990. In all the cases the first Appellant before the Apex Court was sentenced to undergo rigorous imprisonment for seven years. It was

contended before the Apex Court that if the accused was not given benefit of the discretion conferred by section 427 of the said Code, he may have to undergo a very long period of 28 years in jail. The Apex Court directed that the accused should undergo a total period of 14 years of imprisonment in respect of all the convictions.

7. In the case of Mohan Bhanudas (supra) before the learned single Judge, the accused was convicted and sentenced to undergo imprisonment in two different cases. It was pointed out before the learned single Judge that if both the sentences were not made to run concurrently, the accused will have to be in jail for 20 years from 02nd May, 1990. The learned single Judge referred to the decision of the Apex Court in the case of Ammavasai (supra) and in paragraph No.6 proceeded to observe as under:

> "6. Section 427 of the Criminal Procedure Code provides that if a person is already undergoing a sentence of imprisonment and is subsequently convicted to imprisonment or imprisonment for life, the second imprisonment shall commence at the expiration of first imprisonment. However, the courts have been given powers

to direct that subsequent sentence shall run concurrently with the previous sentence".

In the case of Rajan Mohan Thakur (supra), the learned single Judge was dealing with a case where in two different cases the accused was convicted and unless the sentences were ordered to run concurrently accused was required to undergo total period of fourteen years in jail.

8. On plain reading of the decision of the Apex Court in the case of Ammavasai (supra), it is obvious that there is no adjudication made as regards powers of the Court under section 427 of the said Code. As stated in the said Judgment, the Apex Court has adopted a via media obviously by invoking a power under Article 141 of the Constitution of India. The Apex Court has not laid down that there is a power vesting in this Court to direct concurrent running of sentences awarded in distinct and different cases against the same accused.

9. It appears that attention of the learned single Judges of this Court was not invited to a decision of Division Bench of this Court in the case of **Ramesh Vs. State of Maharashtra (1994 Maharashtra Law Journal Page 825)**. After considering the decision

of the Apex Court, the Division Bench held thus:

> "It is evident from the observations of Their Lordships of the Apex Court that in cases which do not arise from a single transaction but, arise out of different transactions, it would not be just and proper to order sentences to run concurrently".

The Division Bench considered the argument based on section 427 of the said Code. In view of the aforesaid decision of the Division Bench, decisions of the learned single Judges which are referred to above cannot be read as binding precedents.

10. Therefore, in this case power under section 427 cannot be exercised as the offences are relating to totally different cases. Hence, there is no merit in the Application and the same is rejected.

JUDGE